APPENDIX A

Decision of National Railroad Adjustment Board

Award 15509
Docket 27393

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION
39 South La Salle Street, Chicago 3, Illinois
With Referee A. Langley Coffey

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN
UNION PACIFIC RAILROAD COMPANY
(South Central District)

STATEMENT OF CLAIM: "Claim for restoration with all rights unimpaired and for pay for all time lost for Brakeman L. L. Price since July 13, 1949."

FINDINGS: The First Division of the National Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

If the carrier is to have efficient operations on its railroad, employes must be relied on to obey operating instructions and orders. Claimant was found to have wilfully disobeyed his orders. This was insubordination and merited discipline.

The employe has been tendered reinstatement on a leniency basis but seeks complete vindication on the

grounds that he was denied the investigation provided by the rules of agreement. Thus, the only question for review is whether there was substantial compliance with the investigation rule.

Basically, the complaint is that the hearing was held when the claimant was not present.

The transcript of the hearing shows that at the appointed time and place the employe appeared without a representative. On the carrier being acquainted with the employe's desire to have his representative present and for no other reason assigned by the employe at the time, the hearing was postponed until the following morning by mutual consent. Neither the employe nor his representative appeared the next morning but the employe made written request for additional time "until my representative Mr. E. C. Grounds is in Las Vegas". The hearing was passed to the afternoon of the same day and claimant was notified to appear and be ready to proceed at that time. When he failed to appear the hearing was held in his absence.

The transcript shows that on the date when the hearing was originally set the employe's chosen representative was off duty and as far as we know was in Las Vegas. No reason is assigned for his failure to appear, but his presence would have obviated the need of any postponement for the reason assigned. The employe, in connection with his request for further delay told an officer of the carrier he did not want to proceed with the hearing on the first day because he would have been compelled to pay a material witness for time lost in order to have him present; that since the witness was scheduled

to be off the next day he sought to avoid this expense by asking for the first postponement. We are left to speculate what would have happened if on the day following the hearing the witness was again on duty but the chosen representative was in from his assigned run.

It must be understood that there is no greater sanctity in the investigation rule than any other on the property. All rules are for the aid, guidance, and protection of responsible persons. The right of the employe to be heard before being disciplined is a personal right which he can waive by action, inaction, or failure to act in good faith. He cannot play fast and loose with the rule and expect its strict observance by others who too are accountable for failure to act promptly, justly, and in good faith.

It would have been more to the employe's credit if he had been forthright in the reason assigned for wanting the hearing delayed the first time. Also, his position here would have been strengthened had he personally appeared at all stages of the proceeding to labor as best he could to preserve his record and to get his story to us first hand. All that the transcript reflects does claimant no credit, but leaves us with the feeling that the things of which he now complains were planned by him that way.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: (Signed) J. M. McLeod
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June, 1952.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

L. L. PRICE,
Appellant,

vs.

UNION PACIFIC RAILROAD,
Appellee.

No. 15,649
May 20, 1958

Upon Appeal from the United States District Court for the District of Nevada

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Before: Healy, Pope, and Hamley, Circuit Judges

HAMLEY, Circuit Judge:

L. L. Price brought this action against Union Pacific Railroad Company, to recover damages in the amount of $118,517, alleging that he had been wrongfully dismissed as a trainman.

After the filing of an answer and the obtaining of certain admissions, defendant moved for a summary judgment. The motion was made on the ground that a determination made by the National Railroad Adjustment Board (Board) that the dismissal was valid precluded this independent court action. Agreeing with this view, the trial court granted summary judgment for defendant. Plaintiff appeals.

The single question presented on this appeal is whether, in view of the action of the Board in denying Price's claim for restoration with all rights unimpaired,

and for back pay, the trial court was without jurisdiction to entertain this independent court action for damages.

Price had been employed by the railroad as a brakeman on its South Central District, operating out of Las Vegas, Nevada. On July 12, 1949, he was instructed to deadhead on a 9:15 p. m. train to Nipton, California, a distance of 56.7 miles, for swing service at Nipton. He reached Nipton at 10:25 p. m., and telephoned the Las Vegas train dispatcher. The dispatcher told him to wait at Nipton until 4:00 a. m., at which time he was to serve as a swing brakeman on a train due at that hour.

Price, however, told the dispatcher that there was no place to eat or sleep in Nipton, and that he would return to Las Vegas on the first eastbound train. The dispatcher told Price not to do this, but he nevertheless returned to Las Vegas on a train which reached there at 12:35 a. m., on July 13. After obtaining food in Las Vegas, Price called the train dispatcher and stated that he was ready to return to Nipton on a train due to depart at 1:45 a. m. The dispatcher instructed Price not to return to Nipton.

On July 16, 1949, the railroad charged Price with violating operating rules 700 and 702. He was given written notice at that time to appear for investigation and hearing on these charges at 10:00 a. m., on the following day. Price appeared at the specified time and place, and requested a postponement upon the ground that his union representative was not present. A postponement until 9:30 the following morning was granted.

At this postponed hearing, Price requested a further postponement on the ground that his representative

was still not available. He was then told that the investigation and hearing would be deferred until 2:30 p. m., and was advised to get another representative.

Price did not appear at 2:30 p. m., and a hearing was conducted in his absence. Questions were propounded of various employees by an assistant superintendent, and a record of the proceedings was transcribed. On July 24, 1949, Price was discharged from the service of the carrier.

Price requested the Brotherhood of Railway Trainmen to seek his reinstatement with pay for time lost and all seniority and other rights restored. The Brotherhood negotiated with the railroad, as a result of which the latter offered to take Price back on a leniency basis. Price rejected this offer.

On January 11, 1951, Price's claim for restoration to service with all rights unimpaired and for back pay was submitted by the Brotherhood in behalf of Price, to the Board.[1] On June 25, 1952, the Board issued an award denying Price's claim in its entirety. On June 6, 1953, Price instituted this suit for damages in the District Court of the United States for the District of Nevada. Jurisdiction of the district court is based on diversity of citizenship.

As before indicated, the railroad was granted summary judgment on the ground that the Board award denying Price's claim barred this independent court action for damages. On this appeal, Price argues that a Board award denying the claim of a discharged employee

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1 Pursuant to § 3, First (i) of the Railway Labor Act (act), as amended, 45 U.S.C.A., § 153, First (i).

does not preclude a subsequent independent court action for damages. Alternatively, he argues, if a Board award has such finality, it is only where the Board has made a determination on the merits, and no such determination was made in this case.

Under the act, an employee who believes that he has been wrongfully discharged may petition the Board for a redress of his grievance. Upon the filing of such a petition, the appropriate division of the Board is authorized to conduct a hearing, make findings, and issue an award in writing. If the award is in favor of the petitioner, the Board is to issue an order directing the carrier to make the award effective. If the carrier does not comply, the petitioner may institute an enforcement proceeding in the district court.[2]

Instead of pursuing this administrative remedy, however, an employee may seek relief by way of an independent court action, providing the state law does not require him to first exhaust his administrative remedies.[3] If, however, the aggrieved employee elects to proceed with his administrative remedy, and there obtains an adjudication on the merits, the award is "final and binding" upon both parties to the dispute, except in so far as it shall contain a money award.[4]

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2 Section 3, First (i)-(p) of the act, as amended, 45 U.S.C.A. § 153, First (i)-(p).

3 Moore v. Illinois Central Railroad Company, 312 U. S. 630; Transcontinental & West.Air. v. Koppal, 345 U. S. 653. It is not here contended that the law of Nevada required Price to exhaust the administrative remedy before instituting this court action.

4 Section 3, First (m) of the act, as amended, 45 U.S.C.A., § 153, First (m); Elgin, Joliet & Eastern R. Co. v. Burley, 325 U. S. 711, reargued 327 U. S. 661; Washington Terminal Co. v. Boswell (D.C.Cir.), 124 F.2d 235, affirmed per curiam by an equally divided vote, 319 U. S. 732. That the award must represent an adjudication on the merits in order to be final and binding, see Michel v. Louisville & N. R. Co. (5 Cir.), 188 F.2d 224, 226; Washington Terminal Co. v. Boswell, supra, page 249; Koelker v. Baltimore and Ohio Railroad Co., 140 F. Supp. 887, 889.

When such an award is adverse to the petitioner, he may nevertheless seek review thereof on a ground amounting to a denial of due process of law. Ellerd v. Southern Pacific Railroad Co. (7 Cir.), 241 F. 2d 541. He may not, however, institute an independent court action to recover damages or obtain other relief.

In the present action, Price did not seek a review of the Board award. This is an independent suit for damages. Under the principles stated above, therefore, the court was without jurisdiction to entertain the action if the Board award represents a determination on the merits.

The question on the merits in this controversy is whether, under the terms of employment and the circumstances of this case, the railroad was entitled to discharge Price because of his return from Nipton to Las Vegas contrary to the directions of the train dispatcher. This was one of the two questions which Price submitted for Board determination. The other question which Price submitted to the Board was whether, prior to his discharge, he was accorded the kind of a hearing prescribed in the agreement between the railroad and the Brotherhood governing wages and working conditions.

In denying Price's claim, the First Division of the Board said:

> "If the carrier is to have efficient operations on its railroad, employes must be relied on to obey operating instructions and orders. Claimant was found to have wilfully disobeyed his orders. This was insubordination and merited discipline.
>
> "The employe has been tendered reinstatement on a leniency basis but seeks complete vindication on the grounds that he was denied the investigation provided by the rules of agreement. Thus, the only question for review is whether there was substantial compliance with the investigation rule.

"Basically, the complaint is that the hearing was held when the claimant was not present."

The Board then proceeded to discuss the manner in which the investigation was conducted by the carrier. It was concluded that none of Price's rights in that regard was abridged. The claim was accordingly denied.

It therefore appears that the Board made no determination on the merits of Price's complaint. The Board neither found nor concluded that the railroad was entitled to discharge Price. The written decision of the Board does not even mention this issue other than to report that "claimant was found to have wilfully disobeyed his orders." The finding thus reported was obviously not its own, but that of the superintendent of the railroad.

The reason that the Board did not deal with the merits of the controversy is that it believed, as stated in its decision, that "the only question for review is whether there was substantial compliance with the investigation rule." This was a plain misconstruction of Price's submission to the board, since he had specifically presented the question on the merits.[5]

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5 In the submission to the Board, on behalf of Price, complaint was made of the procedure followed during the railroad's investigation of the incident leading to his discharge. It was then stated:

"The employees further contend that Brakeman Price did not violate any rules of leaving Nipton to secure food. That Brakeman Price was justified in these actions is supported by the provisions of Section (b) of Article 32 of the agreement effective April 1, 1943, reading as follows:

" 'Swing brakemen will not be tied up nor released at points where sleeping and eating accommodations are not available.' "

This statement was followed by a detailed discussion of the reasons why the railroad was not entitled to discharge Price, under the circumstances of this case.

Appellee argues that, if Price believed that the award did not represent a determination on the merits, he could have obtained an interpretation under the "finality" provision of the act.[6]

There was here no dispute "involving an interpretation of the award," as those words are used in the statute. The "award" was an outright denial of the claim,[7] as all parties concede. The statutory provision under which an interpretation of an award may be obtained does not, in our opinion, apply where the only dispute concerns the grounds relied upon in making an unambiguous award.

We conclude that Price did not obtain an adjudication upon the merits in the proceedings before the Board, and that the trial court therefore had juridiction to entertain this independent action for damages.

Reversed and remanded for further proceedings not inconsistent with this opinion.

HEALY, Circuit Judge, Dissenting

I am unable to go along with the holding of my associates that the Board made no disposition of the merits of appellant's complaint.

The Union, in its submission to the Board, admitted that appellant left Nipton and returned to Las Vegas;

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6. The last sentence of § 3, First (m) of the act, as amended, 45 U.S.C.A., § 153, First (m), reads: "In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute."

7. The Board decision ends with these words: "Award: Claim denied."

and it was not disputed that in doing so he deliberately disobeyed an order of the dispatcher. The Union sought to justify this admitted infraction of an operating order by reference to Section (b) of Article 32 of the Agreement, quoted by my associates in their footnote 5. In disposing of the case the Board, among other things, stated: "If the carrier is to have efficient operations on its railroad, employees must be relied on to obey operating instructions and orders."

It appears to me plain that the Board was of opinion, and in substance held, that the asserted violation by the Company of Article 32, even if true, would not serve to justify an employee's violation of direct operating instructions and his abandonment of his post. Such a ruling would appear to promote safety in railroad operations, which must always take into account considerations of that nature.[1] With its intimate knowledge of the field, the Board is peculiarly equipped to make such a decision.

(Endorsed:) Opinion and Dissenting Opinion. Filed May 20, 1958.

Paul P. O'Brien, Clerk.

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1 Section one of the Railway Labor Act, 45 USCA §151, under subdivision "Fifth" defines "employee" thus:

"The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) . . ."

Section two of the Act, 45 USCA §151 (a) (1), under the heading "General purposes," states one of its purposes to be:

"to avoid any interruption to commerce or to the operation of any carrier engaged therein; . . ."

APPENDIX C

Judgment

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

L. L. PRICE,
Appellant,

vs.

UNION PACIFIC RAILROAD,
Appellee.

No. 15649

JUDGMENT

Appeal from the United States District Court for the District of Nevada.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Nevada, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is reversed, with costs in favor of the Appellant and against the Appellee, and that this cause be, and hereby is remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court.

IT IS FURTHER ORDERED and adjudged by this Court that the Appellant recover against the Appellee for his costs herein expended and have execution therefor.

(ENDORSED) Judgment
Filed and entered: May 20, 1958
PAUL P. O'BRIEN, Clerk

APPENDIX D

Relevant Statutory Provisions

Section 3 of Title I of the Railway Labor Act, as amended (48 Stat. 1185, 1189; 45 U. S. C. § 153) provides as follows:

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

"(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization

shall have more than one representative on any division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representatives, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of

three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train-and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop

laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the empoyees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective

parties to the controversy and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the District in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of

the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

"(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

"(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

"(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such empoyees shall be paid by the Mediation Board.

"(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately

following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a representative of the carriers and a representative of the empoyees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

"(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for

this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (l) hereof, with respect to a division of the Adjustment Board.

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."